

West's New Mexico Statutes Annotated
Chapter 40. Domestic Affairs
Article 4. Dissolution of Marriage

N. M. S. A. 1978, § 40-4-3

§ 40-4-3. Proceeding for division of property, disposition
of children or alimony without the dissolution of marriage

[Currentness](#)

Whenever the husband and wife have permanently separated and no longer live or cohabit together as husband and wife, either may institute proceedings in the district court for a division of property, disposition of children or alimony, without asking for or obtaining in the proceedings, a dissolution of marriage.

Credits

L. 1901, Ch. 62, § 23; L. 1973, Ch. 319, § 3.

Formerly Code 1915, § 2774; C.S. 1929, § 68-502; 1941 Comp., § 25-702; 1953 Comp., § 22-7-2.

[Notes of Decisions \(11\)](#)

NMSA 1978, § 40-4-3, NM ST § 40-4-3

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N. M. S. A. 1978, § 40-4-8

§ 40-4-8. Contested custody; appointment of guardian ad litem

Currentness

A. In any proceeding for the disposition of children when custody of minor children is contested by any party, the court may appoint an attorney at law as guardian ad litem on the court's motion or upon application of any party to appear for and represent the minor children. Expenses, costs and attorneys' fees for the guardian ad litem may be allocated among the parties as determined by the court.

B. When custody is contested, the court:

(1) shall refer that issue to mediation if feasible unless a party asserts or it appears to the court that domestic violence or child abuse has occurred, in which event the court shall halt or suspend mediation unless the court specifically finds that:

(a) the following three conditions are satisfied: 1) the mediator has substantial training concerning the effects of domestic violence or child abuse on victims; 2) a party who is or alleges to be the victim of domestic violence is capable of negotiating with the other party in mediation, either alone or with assistance, without suffering from an imbalance of power as a result of the alleged domestic violence; and 3) the mediation process contains appropriate provisions and conditions to protect against an imbalance of power between the parties resulting from the alleged domestic violence or child abuse; or

(b) in the case of domestic violence involving parents, the parent who is or alleges to be the victim requests mediation and the mediator is informed of the alleged domestic violence;

(2) may order, in addition to or in lieu of the provisions of Paragraph (1) of this subsection, that each of the parties undergo individual counseling in a manner that the court deems appropriate, if the court finds that the parties can afford the counseling; and

(3) may use, in addition to or in lieu of the provisions of Paragraph (1) of this subsection, auxiliary services such as professional evaluation by application of [Rule 11-706 of the New Mexico Rules of Evidence](#) or Rule 1-053 of the Rules of Civil Procedure for the District Courts.

C. As used in this section:

(1) "child abuse" means:

(a) that a child has been physically, emotionally or psychologically abused by a parent;

(b) that a child has been: 1) sexually abused by a parent through criminal sexual penetration, incest or criminal sexual contact of a minor as those acts are defined by state law; or 2) sexually exploited by a parent through allowing, permitting or encouraging the child to engage in prostitution and allowing, permitting, encouraging or engaging the child in obscene or pornographic photographing or filming or depicting a child for commercial purposes as those acts are defined by state law;

(c) that a child has been knowingly, intentionally or negligently placed in a situation that may endanger the child's life or health; or

(d) that a child has been knowingly or intentionally tortured, cruelly confined or cruelly punished; provided that nothing in this paragraph shall be construed to imply that a child who is or has been provided with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner of the church or denomination, is for that reason alone a victim of child abuse within the meaning of this paragraph; and

(2) "domestic violence" means one parent causing or threatening physical harm or assault or inciting imminent fear of physical, emotional or psychological harm to the other parent.

Credits

L. 1977, Ch. 286, § 1; [L. 1993, Ch. 241, § 1](#).

Formerly 1953 Comp., § 22-7-7.

[Notes of Decisions \(7\)](#)

NMSA 1978, § 40-4-8, NM ST § 40-4-8

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N. M. S. A. 1978, § 40-4-9

§ 40-4-9. Standards for the determination of child custody; hearing

Currentness

A. In any case in which a judgment or decree will be entered awarding the custody of a minor, the district court shall, if the minor is under the age of fourteen, determine custody in accordance with the best interests of the child. The court shall consider all relevant factors including, but not limited to:

- (1) the wishes of the child's parent or parents as to his custody;
- (2) the wishes of the child as to his custodian;
- (3) the interaction and interrelationship of the child with his parents, his siblings and any other person who may significantly affect the child's best interest;
- (4) the child's adjustment to his home, school and community; and
- (5) the mental and physical health of all individuals involved.

B. If the minor is fourteen years of age or older, the court shall consider the desires of the minor as to with whom he wishes to live before awarding custody of such minor.

C. Whenever testimony is taken from the minor concerning his choice of custodian, the court shall hold a private hearing in his chambers. The judge shall have a court reporter in his chambers who shall transcribe the hearing; however, the court reporter shall not file a transcript unless an appeal is taken.

Credits

L. 1977, Ch. 172, § 1.

Formerly 1953 Comp., § 22-7-7.1.

Notes of Decisions (49)

NMSA 1978, § 40-4-9, NM ST § 40-4-9

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N. M. S. A. 1978, § 40-4-9.1

§ 40-4-9.1. Joint custody; standards for determination; parenting plan

Currentness

A. There shall be a presumption that joint custody is in the best interests of a child in an initial custody determination. An award of joint custody does not imply an equal division of financial responsibility for the child. Joint custody shall not be awarded as a substitute for an existing custody arrangement unless there has been a substantial and material change in circumstances since the entry of the prior custody order or decree, which change affects the welfare of the child such that joint custody is presently in the best interests of the child. With respect to any proceeding in which it is proposed that joint custody be terminated, the court shall not terminate joint custody unless there has been a substantial and material change in circumstances affecting the welfare of the child, since entry of the joint custody order, such that joint custody is no longer in the best interests of the child.

B. In determining whether a joint custody order is in the best interests of the child, in addition to the factors provided in [Section 40-4-9 NMSA 1978](#), the court shall consider the following factors:

- (1) whether the child has established a close relationship with each parent;
- (2) whether each parent is capable of providing adequate care for the child throughout each period of responsibility, including arranging for the child's care by others as needed;
- (3) whether each parent is willing to accept all responsibilities of parenting, including a willingness to accept care of the child at specified times and to relinquish care to the other parent at specified times;
- (4) whether the child can best maintain and strengthen a relationship with both parents through predictable, frequent contact and whether the child's development will profit from such involvement and influence from both parents;
- (5) whether each parent is able to allow the other to provide care without intrusion, that is, to respect the other's parental rights and responsibilities and right to privacy;
- (6) the suitability of a parenting plan for the implementation of joint custody, preferably, although not necessarily, one arrived at through parental agreement;
- (7) geographic distance between the parents' residences;
- (8) willingness or ability of the parents to communicate, cooperate or agree on issues regarding the child's needs; and

(9) whether a judicial adjudication has been made in a prior or the present proceeding that either parent or other person seeking custody has engaged in one or more acts of domestic abuse against the child, a parent of the child or other household member. If a determination is made that domestic abuse has occurred, the court shall set forth findings that the custody or visitation ordered by the court adequately protects the child, the abused parent or other household member.

C. In any proceeding in which the custody of a child is at issue, the court shall not prefer one parent as a custodian solely because of gender.

D. In any case in which the parents agree to a form of custody, the court should award custody consistent with the agreement unless the court determines that such agreement is not in the best interests of the child.

E. In making an order of joint custody, the court may specify the circumstances, if any, under which the consent of both legal custodians is required to be obtained in order to exercise legal control of the child and the consequences of the failure to obtain mutual consent.

F. When joint custody is awarded, the court shall approve a parenting plan for the implementation of the prospective custody arrangement prior to the award of joint custody. The parenting plan shall include a division of a child's time and care into periods of responsibility for each parent. It may also include:

(1) statements regarding the child's religion, education, child care, recreational activities and medical and dental care;

(2) designation of specific decision-making responsibilities;

(3) methods of communicating information about the child, transporting the child, exchanging care for the child and maintaining telephone and mail contact between parent and child;

(4) procedures for future decision making, including procedures for dispute resolution; and

(5) other statements regarding the welfare of the child or designed to clarify and facilitate parenting under joint custody arrangements.

In a case where joint custody is not agreed to or necessary aspects of the parenting plan are contested, the parties shall each submit parenting plans. The court may accept the plan proposed by either party or it may combine or revise these plans as it deems necessary in the child's best interests. The time of filing of parenting plans shall be set by local rule. A plan adopted by the court shall be entered as an order of the court.

G. Where custody is contested, the court shall refer that issue to mediation if feasible. The court may also use auxiliary services such as professional evaluation by application of Rule 706 of the New Mexico Rules of Evidence or Rule 53 of the Rules of Civil Procedure for the District Courts.

H. Notwithstanding any other provisions of law, access to records and information pertaining to a minor child, including medical, dental and school records, shall not be denied to a parent because that parent is not the child's physical custodial parent or because that parent is not a joint custodial parent.

I. Whenever a request for joint custody is granted or denied, the court shall state in its decision its basis for granting or denying the request for joint custody. A statement that joint custody is or is not in the best interests of the child is not sufficient to meet the requirements of this subsection.

J. An award of joint custody means that:

(1) each parent shall have significant, well-defined periods of responsibility for the child;

(2) each parent shall have, and be allowed and expected to carry out, responsibility for the child's financial, physical, emotional and developmental needs during that parent's periods of responsibility;

(3) the parents shall consult with each other on major decisions involving the child before implementing those decisions; that is, neither parent shall make a decision or take an action which results in a major change in a child's life until the matter has been discussed with the other parent and the parents agree. If the parents, after discussion, cannot agree and if one parent wishes to effect a major change while the other does not wish the major change to occur, then no change shall occur until the issue has been resolved as provided in this subsection;

(4) the following guidelines apply to major changes in a child's life:

(a) if either parent plans to change his home city or state of residence, he shall provide to the other parent thirty days' notice in writing stating the date and destination of move;

(b) the religious denomination and religious activities, or lack thereof, which were being practiced during the marriage should not be changed unless the parties agree or it has been otherwise resolved as provided in this subsection;

(c) both parents shall have access to school records, teachers and activities. The type of education, public or private, which was in place during the marriage should continue, whenever possible, and school districts should not be changed unless the parties agree or it has been otherwise resolved as provided in this subsection;

(d) both parents shall have access to medical and dental treatment providers and records. Each parent has authority to make emergency medical decisions. Neither parent may contract for major elective medical or dental treatment unless both parents agree or it has been otherwise resolved as provided in this subsection; and

(e) both parents may attend the child's public activities and both parents should know the necessary schedules. Whatever recreational activities the child participated in during the marriage should continue with the child's agreement, regardless of which of the parents has physical custody. Also, neither parent may enroll the child in a new recreational activity unless the parties agree or it has been otherwise resolved as provided in this subsection; and

(5) decisions regarding major changes in a child's life may be decided by:

- (a) agreement between the joint custodial parents;
- (b) requiring that the parents seek family counseling, conciliation or mediation service to assist in resolving their differences;
- (c) agreement by the parents to submit the dispute to binding arbitration;
- (d) allocating ultimate responsibility for a particular major decision area to one legal custodian;
- (e) terminating joint custody and awarding sole custody to one person;
- (f) reference to a master pursuant to Rule 53 of the Rules of Civil Procedure for the District Courts; or
- (g) the district court.

K. When any person other than a natural or adoptive parent seeks custody of a child, no such person shall be awarded custody absent a showing of unfitness of the natural or adoptive parent.

L. As used in this section:

- (1) "child" means a person under the age of eighteen;
- (2) "custody" means the authority and responsibility to make major decisions in a child's best interests in the areas of residence, medical and dental treatment, education or child care, religion and recreation;
- (3) "domestic abuse" means any incident by a household member against another household member resulting in:
 - (a) physical harm;
 - (b) severe emotional distress;
 - (c) a threat causing imminent fear of physical harm by any household member;
 - (d) criminal trespass;

(e) criminal damage to property;

(f) stalking or aggravated stalking, as provided in [Sections 30-3A-3](#) and [30-3A-3.1 NMSA](#) 1978; or

(g) harassment, as provided in [Section 30-3A-2 NMSA](#) 1978;

(4) “joint custody” means an order of the court awarding custody of a child to two parents. Joint custody does not imply an equal division of the child's time between the parents or an equal division of financial responsibility for the child;

(5) “parent” means a natural parent, adoptive parent or person who is acting as a parent who has or shares legal custody of a child or who claims a right to have or share legal custody;

(6) “parenting plan” means a document submitted for approval of the court setting forth the responsibilities of each parent individually and the parents jointly in a joint custody arrangement;

(7) “period of responsibility” means a specified period of time during which a parent is responsible for providing for a child's physical, developmental and emotional needs, including the decision making required in daily living. Specified periods of responsibility shall not be changed in an instance or more permanently except by the methods of decision making described under Subsection L ¹ of this section;

(8) “sole custody” means an order of the court awarding custody of a child to one parent; and

(9) “visitation” means a period of time available to a noncustodial parent, under a sole custody arrangement, during which a child resides with or is under the care and control of the noncustodial parent.

Credits

L. 1981, Ch. 112, § 1; L. 1986, Ch. 41, § 1; [L. 1999, Ch. 242, § 1](#).

[Notes of Decisions \(41\)](#)

Footnotes

¹ So in enrolled bill; probably should read “Subsection J”.

NMSA 1978, § 40-4-9.1, NM ST § 40-4-9.1

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N. M. S. A. 1978, Ch. 40, Art. 10A, Refs & Annos
[Currentness](#)

Footnotes

* Date of approval.

NMSA 1978, Ch. 40, Art. 10A, Refs & Annos, NM ST Ch. 40, Art. 10A, Refs & Annos
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N. M. S. A. 1978, § 40-10A-101

§ 40-10A-101. Short title

[Currentness](#)

This act may be cited as the “Uniform Child-Custody Jurisdiction and Enforcement Act”.

Credits

[L. 2001, Ch. 114, § 101, eff. July 1, 2001.](#)

[Notes of Decisions \(1\)](#)

NMSA 1978, § 40-10A-101, NM ST § 40-10A-101

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N. M. S. A. 1978, § 40-10A-102

§ 40-10A-102. Definitions

Currentness

As used in the Uniform Child-Custody Jurisdiction and Enforcement Act:

- (1) “abandoned” means left without provision for reasonable and necessary care or supervision;
- (2) “child” means an individual who has not attained eighteen years of age;
- (3) “child-custody determination” means a judgment, decree or other order of a court providing for legal custody, physical custody or visitation with respect to a child. The term includes a permanent, temporary, initial or modification order. The term does not include an order relating to child support or other monetary obligation of an individual;
- (4) “child-custody proceeding” means a proceeding in which legal custody, physical custody or visitation with respect to a child is an issue. The term includes a proceeding for dissolution of marriage, custody of a child when dissolution of a marriage is not an issue, neglect, abuse, dependency, guardianship, paternity, termination of parental rights whether filed alone or with an adoption proceeding and protection from domestic violence in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation or enforcement under Article 3 of the Uniform Child-Custody Jurisdiction and Enforcement Act;
- (5) “commencement” means the filing of the first pleading in a proceeding;
- (6) “court” means an entity authorized under the law of a state to establish, enforce or modify a child-custody determination;
- (7) “home state” means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period;
- (8) “initial determination” means the first child- custody determination concerning a particular child;
- (9) “issuing court” means the court that makes a child- custody determination for which enforcement is sought under the Uniform Child-Custody Jurisdiction and Enforcement Act;

(10) “issuing state” means the state in which a child- custody determination is made;

(11) “modification” means a child-custody determination that changes, replaces, supersedes or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination;

(12) “person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation or any other legal or commercial entity;

(13) “person acting as a parent” means a person, other than a parent, who:

(A) has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child-custody proceeding; and

(B) has been awarded legal custody by a court or claims a right to legal custody under the law of this state;

(14) “physical custody” means the physical care and supervision of a child;

(15) “state” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States;

(16) “tribe” means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a state; and

(17) “warrant” means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

Credits

[L. 2001, Ch. 114, § 102, eff. July 1, 2001.](#)

[Notes of Decisions \(1\)](#)

NMSA 1978, § 40-10A-102, NM ST § 40-10A-102

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N. M. S. A. 1978, § 40-10A-103

§ 40-10A-103. Proceedings governed by other law

[Currentness](#)

The Uniform Child-Custody Jurisdiction and Enforcement Act does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

Credits

[L. 2001, Ch. 114, § 103, eff. July 1, 2001.](#)

NMSA 1978, § 40-10A-103, NM ST § 40-10A-103

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N. M. S. A. 1978, § 40-10A-104

§ 40-10A-104. Application to Indian tribes

Currentness

(a) A child-custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, [25 U.S.C. § 1901 et seq.](#), is not subject to the Uniform Child-Custody Jurisdiction and Enforcement Act to the extent that it is governed by the Indian Child Welfare Act.

(b) A court of this state shall treat a tribe as if it were a state of the United States for the purpose of applying Articles 1 and 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act.

(c) A child-custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of the Uniform Child-Custody Jurisdiction and Enforcement Act must be recognized and enforced under Article 3 of that act.

Credits

[L. 2001, Ch. 114, § 104, eff. July 1, 2001.](#)

[Notes of Decisions \(1\)](#)

NMSA 1978, § 40-10A-104, NM ST § 40-10A-104

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N. M. S. A. 1978, § 40-10A-105

§ 40-10A-105. International application of the Uniform Child-Custody Jurisdiction and Enforcement Act

Currentness

- (a) A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying Articles 1 and 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act.
- (b) Except as otherwise provided in subsection (c), a child-custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of the Uniform Child-Custody Jurisdiction and Enforcement Act must be recognized and enforced under Article 3 of that act.
- (c) A court of this state need not apply the Uniform Child-Custody Jurisdiction and Enforcement Act if the child custody law of a foreign country violates fundamental principles of human rights.

Credits

L. 2001, Ch. 114, § 105, eff. July 1, 2001.

NMSA 1978, § 40-10A-105, NM ST § 40-10A-105

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N. M. S. A. 1978, § 40-10A-106

§ 40-10A-106. Effect of child-custody determination

[Currentness](#)

A child-custody determination made by a court of this state that had jurisdiction under the Uniform Child-Custody Jurisdiction and Enforcement Act binds all persons who have been served in accordance with the laws of this state or notified in accordance with Section 108 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

Credits

[L. 2001, Ch. 114, § 106, eff. July 1, 2001.](#)

NMSA 1978, § 40-10A-106, NM ST § 40-10A-106

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N. M. S. A. 1978, § 40-10A-107

§ 40-10A-107. Priority

Currentness

If a question of existence or exercise of jurisdiction under the Uniform Child-Custody Jurisdiction and Enforcement Act is raised in a child-custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

Credits

L. 2001, Ch. 114, § 107, eff. July 1, 2001.

NMSA 1978, § 40-10A-107, NM ST § 40-10A-107

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N. M. S. A. 1978, § 40-10A-108

§ 40-10A-108. Notice to persons outside state

[Currentness](#)

(a) Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made.

(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

Credits

[L. 2001, Ch. 114, § 108, eff. July 1, 2001.](#)

NMSA 1978, § 40-10A-108, NM ST § 40-10A-108

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N. M. S. A. 1978, § 40-10A-109

§ 40-10A-109. Appearance and limited immunity

Currentness

(a) A party to a child-custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child-custody determination, is not subject to personal jurisdiction in this state for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

(b) A person who is subject to personal jurisdiction in this state on a basis other than physical presence is not immune from service of process in this state. A party present in this state who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

(c) The immunity granted by subsection (a) does not extend to civil litigation based on acts unrelated to the participation in a proceeding under the Uniform Child-Custody Jurisdiction and Enforcement Act committed by an individual while present in this state.

Credits

L. 2001, Ch. 114, § 109, eff. July 1, 2001.

NMSA 1978, § 40-10A-109, NM ST § 40-10A-109

Current through Ch. 228 (end) of the First Regular Session of the 51st Legislature (2013)

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N. M. S. A. 1978, § 40-10A-110

§ 40-10A-110. Communication between courts

Currentness

- (a) A court of this state may communicate with a court in another state concerning a proceeding arising under the Uniform Child-Custody Jurisdiction and Enforcement Act.
- (b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.
- (c) Communication between courts on schedules, calendars, court records and similar matters may occur without informing the parties. A record need not be made of the communication.
- (d) Except as otherwise provided in subsection (c), a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.
- (e) For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Credits

L. 2001, Ch. 114, § 110, eff. July 1, 2001.

NMSA 1978, § 40-10A-110, NM ST § 40-10A-110

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N. M. S. A. 1978, § 40-10A-111

§ 40-10A-111. Taking testimony in another state

[Currentness](#)

(a) In addition to other procedures available to a party, a party to a child-custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

Credits

[L. 2001, Ch. 114, § 111, eff. July 1, 2001.](#)

NMSA 1978, § 40-10A-111, NM ST § 40-10A-111

Current through Ch. 228 (end) of the First Regular Session of the 51st Legislature (2013)

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N. M. S. A. 1978, § 40-10A-112

§ 40-10A-112. Cooperation between courts; preservation of records

Currentness

- (a) A court of this state may request the appropriate court of another state to:
- (1) hold an evidentiary hearing;
 - (2) order a person to produce or give evidence pursuant to procedures of that state;
 - (3) order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;
 - (4) forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented and any evaluation prepared in compliance with the request; and
 - (5) order a party to a child-custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.
- (b) Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in subsection (a).
- (c) Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) may be assessed against the parties according to the law of this state.
- (d) A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations and other pertinent records with respect to a child-custody proceeding until the child attains eighteen years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

Credits

L. 2001, Ch. 114, § 112, eff. July 1, 2001.

Notes of Decisions (1)

NMSA 1978, § 40-10A-112, NM ST § 40-10A-112

Current through Ch. 228 (end) of the First Regular Session of the 51st Legislature (2013)

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N. M. S. A. 1978, § 40-10A-201

§ 40-10A-201. Initial child-custody jurisdiction

Currentness

(a) Except as otherwise provided in Section 204, a court of this state has jurisdiction to make an initial child-custody determination only if:

(1) this state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(2) a court of another state does not have jurisdiction under paragraph (1) or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under Section 207 or 208 and:

(A) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(B) substantial evidence is available in this state concerning the child's care, protection, training and personal relationships;

(3) all courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Section 207 or 208; or

(4) no court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2) or (3).

(b) Subsection (a) is the exclusive jurisdictional basis for making a child-custody determination by a court of this state.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.

Credits

L. 2001, Ch. 114, § 201, eff. July 1, 2001.

Notes of Decisions (42)

NMSA 1978, § 40-10A-201, NM ST § 40-10A-201

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N. M. S. A. 1978, § 40-10A-202

§ 40-10A-202. Exclusive, continuing jurisdiction

Currentness

(a) Except as otherwise provided in Section 204, a court of this state which has made a child-custody determination consistent with Section 201 or 203 has exclusive, continuing jurisdiction over the determination until:

(1) a court of this state determines that the child, or the child and one parent, or the child and a person acting as a parent do not have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training and personal relationships; or

(2) a court of this state or a court of another state determines that the child, the child's parents and any person acting as a parent do not presently reside in this state.

(b) A court of this state which has made a child-custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under Section 201.

Credits

L. 2001, Ch. 114, § 202, eff. July 1, 2001.

Notes of Decisions (3)

NMSA 1978, § 40-10A-202, NM ST § 40-10A-202

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N. M. S. A. 1978, § 40-10A-203

§ 40-10A-203. Jurisdiction to modify determination

[Currentness](#)

Except as otherwise provided in Section 204, a court of this state may not modify a child-custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under Section 201(a)(1) or (2) and:

- (1) the court of the other state determines it no longer has exclusive, continuing jurisdiction under Section 202 or that a court of this state would be a more convenient forum under Section 207; or
- (2) a court of this state or a court of the other state determines that the child, the child's parents and any person acting as a parent do not presently reside in the other state.

Credits

[L. 2001, Ch. 114, § 203, eff. July 1, 2001.](#)

[Notes of Decisions \(12\)](#)

NMSA 1978, § 40-10A-203, NM ST § 40-10A-203

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N. M. S. A. 1978, § 40-10A-204

§ 40-10A-204. Temporary emergency jurisdiction

Currentness

(a) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(b) If there is no previous child-custody determination that is entitled to be enforced under the Uniform Child-Custody Jurisdiction and Enforcement Act and a child-custody proceeding has not been commenced in a court of a state having jurisdiction under Sections 201 through 203, a child-custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under Sections 201 through 203. If a child-custody proceeding has not been or is not commenced in a court of a state having jurisdiction under Sections 201 through 203, a child-custody determination made under this section becomes a final determination, if it so provides, and this state becomes the home state of the child.

(c) If there is a previous child-custody determination that is entitled to be enforced under the Uniform Child-Custody Jurisdiction and Enforcement Act, or a child-custody proceeding has been commenced in a court of a state having jurisdiction under Sections 201 through 203, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under Sections 201 through 203. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A court of this state which has been asked to make a child-custody determination under this section, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of a state having jurisdiction under Sections 201 through 203, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to Sections 201 through 203, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of another state under a statute similar to this section, shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child and determine a period for the duration of the temporary order.

Credits

L. 2001, Ch. 114, § 204, eff. July 1, 2001.

Notes of Decisions (1)

NMSA 1978, § 40-10A-204, NM ST § 40-10A-204

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N. M. S. A. 1978, § 40-10A-205

§ 40-10A-205. Notice; opportunity to be heard; joinder

[Currentness](#)

(a) Before a child-custody determination is made under the Uniform Child-Custody Jurisdiction and Enforcement Act, notice and an opportunity to be heard in accordance with the standards of Section 108 must be given to all persons entitled to notice under the law of this state as in child-custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated and any person having physical custody of the child.

(b) The Uniform Child-Custody Jurisdiction and Enforcement Act does not govern the enforceability of a child-custody determination made without notice or an opportunity to be heard.

(c) The obligation to join a party and the right to intervene as a party in a child-custody proceeding under the Uniform Child-Custody Jurisdiction and Enforcement Act are governed by the law of this state as in child-custody proceedings between residents of this state.

Credits

[L. 2001, Ch. 114, § 205, eff. July 1, 2001.](#)

NMSA 1978, § 40-10A-205, NM ST § 40-10A-205

Current through Ch. 228 (end) of the First Regular Session of the 51st Legislature (2013)

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N. M. S. A. 1978, § 40-10A-206

§ 40-10A-206. Simultaneous proceedings

Currentness

(a) Except as otherwise provided in Section 204, a court of this state may not exercise its jurisdiction under Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with the Uniform Child-Custody Jurisdiction and Enforcement Act, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under Section 207.

(b) Except as otherwise provided in Section 204, a court of this state, before hearing a child-custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to Section 209. If the court determines that a child-custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with the Uniform Child-Custody Jurisdiction and Enforcement Act, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with the Uniform Child-Custody Jurisdiction and Enforcement Act does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

(c) In a proceeding to modify a child-custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child-custody determination has been commenced in another state, the court may:

- (1) stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying or dismissing the proceeding for enforcement;
- (2) enjoin the parties from continuing with the proceeding for enforcement; or
- (3) proceed with the modification under conditions it considers appropriate.

Credits

L. 2001, Ch. 114, § 206, eff. July 1, 2001.

Notes of Decisions (8)

NMSA 1978, § 40-10A-206, NM ST § 40-10A-206

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N. M. S. A. 1978, § 40-10A-207

§ 40-10A-207. Inconvenient forum

Currentness

(a) A court of this state which has jurisdiction under the Uniform Child-Custody Jurisdiction and Enforcement Act to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion or request of another court.

(b) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

- (1) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
- (2) the length of time the child's home state is or recently was another state;
- (3) the distance between the court in this state and the court in the state that would assume jurisdiction;
- (4) the relative financial circumstances of the parties with respect to travel arrangements;
- (5) any agreement of the parties as to which state should assume jurisdiction;
- (6) the nature and location of the evidence required to resolve the pending custody litigation, including testimony of the child;
- (7) the ability of the court of each state to decide the custody issue expeditiously and the procedures necessary to present the evidence; and
- (8) whether another state has a closer connection with the child or with the child and one or more of the parties, including whether the court of the other state is more familiar with the facts and issues in the pending litigation.

(c) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(d) A court of this state may decline to exercise its jurisdiction under the Uniform Child-Custody Jurisdiction and Enforcement Act if a child-custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

Credits

[L. 2001, Ch. 114, § 207, eff. July 1, 2001.](#)

[Notes of Decisions \(5\)](#)

NMSA 1978, § 40-10A-207, NM ST § 40-10A-207

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N. M. S. A. 1978, § 40-10A-208

§ 40-10A-208. Jurisdiction declined by reason of conduct

Currentness

(a) Except as otherwise provided in Section 204 or by other law of this state, if a court of this state has jurisdiction under the Uniform Child-Custody Jurisdiction and Enforcement Act because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

- (1) the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;
- (2) a court of the state otherwise having jurisdiction under Sections 201 through 203 determines that this state is a more appropriate forum under Section 207; or
- (3) no court of any other state would have jurisdiction under the criteria specified in Sections 201 through 203.

(b) If a court of this state declines to exercise its jurisdiction pursuant to subsection (a), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child-custody proceeding is commenced in a court having jurisdiction under Sections 201 through 203.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a), it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses and child care expenses during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs or expenses against this state unless authorized by law other than the Uniform Child-Custody Jurisdiction and Enforcement Act.

Credits

L. 2001, Ch. 114, § 208, eff. July 1, 2001.

NMSA 1978, § 40-10A-208, NM ST § 40-10A-208

Current through Ch. 228 (end) of the First Regular Session of the 51st Legislature (2013)

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N. M. S. A. 1978, § 40-10A-209

§ 40-10A-209. Information to be submitted to court

Currentness

(a) Subject to local law providing for the confidentiality of procedures, addresses and other identifying information in a child-custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(1) has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number and the date of the child-custody determination, if any;

(2) knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights and adoptions and, if so, identify the court, the case number and the nature of the proceeding; and

(3) knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(b) If the information required by subsection (a) is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in subsection (a)(1) through (3) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(e) If a party alleges in an affidavit or a pleading under oath that the health, safety or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety or liberty of the party or child and determines that the disclosure is in the interest of justice.

Credits

[L. 2001, Ch. 114, § 209, eff. July 1, 2001.](#)

NMSA 1978, § 40-10A-209, NM ST § 40-10A-209

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N. M. S. A. 1978, § 40-10A-210

§ 40-10A-210. Appearance of parties and child

Currentness

(a) In a child-custody proceeding in this state, the court may order a party to the proceeding who is in this state to appear before the court in person with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear in person with the child.

(b) If a party to a child-custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to Section 108 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(d) If a party to a child-custody proceeding who is outside this state is directed to appear under subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

Credits

L. 2001, Ch. 114, § 210, eff. July 1, 2001.

Notes of Decisions (1)

NMSA 1978, § 40-10A-210, NM ST § 40-10A-210

Current through Ch. 228 (end) of the First Regular Session of the 51st Legislature (2013)

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N. M. S. A. 1978, § 40-10A-301

§ 40-10A-301. Definitions

[Currentness](#)

As used in Article 3 of the Uniform Child-Custody Jurisdiction and Enforcement Act:

(1) “petitioner” means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child-custody determination; and

(2) “respondent” means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child-custody determination.

Credits

[L. 2001, Ch. 114, § 301, eff. July 1, 2001.](#)

NMSA 1978, § 40-10A-301, NM ST § 40-10A-301

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N. M. S. A. 1978, § 40-10A-302

§ 40-10A-302. Enforcement under Hague Convention

[Currentness](#)

Under Article 3 of the Uniform Child-Custody Jurisdiction and Enforcement Act, a court of this state may enforce an order for the return of a child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child-custody determination.

Credits

[L. 2001, Ch. 114, § 302, eff. July 1, 2001.](#)

NMSA 1978, § 40-10A-302, NM ST § 40-10A-302

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N. M. S. A. 1978, § 40-10A-303

§ 40-10A-303. Duty to enforce

[Currentness](#)

(a) A court of this state shall recognize and enforce a child-custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with the Uniform Child-Custody Jurisdiction and Enforcement Act or if the determination was made under factual circumstances meeting the jurisdictional standards of that act and the determination has not been modified in accordance with that act.

(b) A court of this state may utilize any remedy available under other law of this state to enforce a child-custody determination made by a court of another state. The remedies provided in Article 3 of the Uniform Child-Custody Jurisdiction and Enforcement Act are cumulative and do not affect the availability of other remedies to enforce a child-custody determination.

(c) A court of this state may enforce a custody determination made pursuant to Sections 201 and 203 until it is modified by a court having jurisdiction pursuant to Sections 201 and 203.

Credits

[L. 2001, Ch. 114, § 303, eff. July 1, 2001.](#)

NMSA 1978, § 40-10A-303, NM ST § 40-10A-303

Current through Ch. 228 (end) of the First Regular Session of the 51st Legislature (2013)

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N. M. S. A. 1978, § 40-10A-304

§ 40-10A-304. Temporary visitation

[Currentness](#)

(a) A court of this state which does not have jurisdiction to modify a child-custody determination may issue a temporary order enforcing:

(1) a visitation schedule made by a court of another state; or

(2) the visitation provisions of a child-custody determination of another state that does not provide for a specific visitation schedule.

(b) If a court of this state makes an order under subsection (a)(2), it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act. The order remains in effect until an order is obtained from the other court or the period expires.

Credits

[L. 2001, Ch. 114, § 304, eff. July 1, 2001.](#)

NMSA 1978, § 40-10A-304, NM ST § 40-10A-304

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N. M. S. A. 1978, § 40-10A-305

§ 40-10A-305. Registration of child-custody determination

Currentness

(a) A child-custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the appropriate court in this state:

(1) a letter or other document requesting registration;

(2) two copies, including one certified copy, of the determination sought to be registered and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(3) except as otherwise provided in Section 209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child-custody determination sought to be registered.

(b) On receipt of the documents required by subsection (a), the registering court shall:

(1) cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(2) serve notice upon the persons named pursuant to subsection (a)(3) and provide them with an opportunity to contest the registration in accordance with this section.

(c) The notice required by subsection (b)(2) must state that:

(1) a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;

(2) a hearing to contest the validity of the registered determination must be requested within twenty days after service of notice; and

(3) failure to contest the registration will result in confirmation of the child-custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(d) A person seeking to contest the validity of a registered order must request a hearing within twenty days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(1) the issuing court did not have jurisdiction under Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act;

(2) the child-custody determination sought to be registered has been vacated, stayed or modified by a court having jurisdiction to do so under Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act; or

(3) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of Section 108, in the proceedings before the court that issued the order for which registration is sought.

(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

Credits

[L. 2001, Ch. 114, § 305, eff. July 1, 2001.](#)

NMSA 1978, § 40-10A-305, NM ST § 40-10A-305

Current through Ch. 228 (end) of the First Regular Session of the 51st Legislature (2013)

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N. M. S. A. 1978, § 40-10A-306

§ 40-10A-306. Enforcement of registered determination

Currentness

(a) A court of this state may grant any relief normally available under the law of this state to enforce a registered child-custody determination made by a court of another state.

(b) A court of this state shall recognize and enforce, but may not modify, except in accordance with Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act, a registered child-custody determination of a court of another state.

Credits

L. 2001, Ch. 114, § 306, eff. July 1, 2001.

NMSA 1978, § 40-10A-306, NM ST § 40-10A-306

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N. M. S. A. 1978, § 40-10A-307

§ 40-10A-307. Simultaneous proceedings

[Currentness](#)

If a proceeding for enforcement under Article 3 of the Uniform Child-Custody Jurisdiction and Enforcement Act is commenced in a court of this state and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

Credits

[L. 2001, Ch. 114, § 307, eff. July 1, 2001.](#)

NMSA 1978, § 40-10A-307, NM ST § 40-10A-307

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N. M. S. A. 1978, § 40-10A-308

§ 40-10A-308. Expedited enforcement of child-custody determination

Currentness

(a) A petition under Article 3 of the Uniform Child-Custody Jurisdiction and Enforcement Act must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(b) A petition for enforcement of a child-custody determination must state:

(1) whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(2) whether the determination for which enforcement is sought has been vacated, stayed or modified by a court whose decision must be enforced under the Uniform Child-Custody Jurisdiction and Enforcement Act and, if so, identify the court, the case number and the nature of the proceeding;

(3) whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights and adoptions and, if so, identify the court, the case number and the nature of the proceeding;

(4) the present physical address of the child and the respondent, if known;

(5) whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and

(6) if the child-custody determination has been registered and confirmed under Section 305, the date and place of registration.

(c) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(d) An order issued under subsection (c) must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees,

costs and expenses under Section 312 and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(1) the child-custody determination has not been registered and confirmed under Section 305 and that:

(A) the issuing court did not have jurisdiction under Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act;

(B) the child-custody determination for which enforcement is sought has been vacated, stayed or modified by a court having jurisdiction to do so under Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act; and

(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 108 in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child-custody determination for which enforcement is sought was registered and confirmed under Section 305, but has been vacated, stayed or modified by a court of a state having jurisdiction to do so under Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act.

Credits

[L. 2001, Ch. 114, § 308, eff. July 1, 2001.](#)

NMSA 1978, § 40-10A-308, NM ST § 40-10A-308

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§ 40-10A-309. Service of petition and order

[Currentness](#)

Except as otherwise provided in Section 311, the petition and order must be served, by any method authorized by the law of this state, upon the respondent and any person who has physical custody of the child.

Credits

[L. 2001, Ch. 114, § 309, eff. July 1, 2001.](#)

NMSA 1978, § 40-10A-309, NM ST § 40-10A-309

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N. M. S. A. 1978, § 40-10A-310

§ 40-10A-310. Hearing and order

Currentness

(a) Unless the court issues a temporary emergency order pursuant to Section 204, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(1) the child-custody determination has not been registered and confirmed under Section 305 and that:

(A) the issuing court did not have jurisdiction under Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act;

(B) the child-custody determination for which enforcement is sought has been vacated, stayed or modified by a court of a state having jurisdiction to do so under Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act; or

(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 108 in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child-custody determination for which enforcement is sought was registered and confirmed under Section 305 but has been vacated, stayed or modified by a court of a state having jurisdiction to do so under Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act.

(b) The court shall award the fees, costs and expenses authorized under Section 312 and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(c) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(d) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under Article 3 of the Uniform Child-Custody Jurisdiction and Enforcement Act.

Credits

[L. 2001, Ch. 114, § 310, eff. July 1, 2001.](#)

NMSA 1978, § 40-10A-310, NM ST § 40-10A-310

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N. M. S. A. 1978, § 40-10A-311

§ 40-10A-311. Warrant to take physical custody of child

Currentness

(a) Upon the filing of a petition seeking enforcement of a child-custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this state.

(b) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this state, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by Section 308(b).

(c) A warrant to take physical custody of a child must:

(1) recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

(2) direct law enforcement officers to take physical custody of the child immediately; and

(3) provide for the placement of the child pending final relief.

(d) The respondent must be served with the petition, warrant and order immediately after the child is taken into physical custody.

(e) A warrant to take physical custody of a child is enforceable throughout this state. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

Credits

L. 2001, Ch. 114, § 311, eff. July 1, 2001.

NMSA 1978, § 40-10A-311, NM ST § 40-10A-311

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N. M. S. A. 1978, § 40-10A-312

§ 40-10A-312. Costs, fees and expenses

[Currentness](#)

(a) The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses and child care expenses during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(b) The court may not assess fees, costs or expenses against a state unless authorized by law other than the Uniform Child-Custody Jurisdiction and Enforcement Act.

Credits

[L. 2001, Ch. 114, § 312, eff. July 1, 2001.](#)

NMSA 1978, § 40-10A-312, NM ST § 40-10A-312

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N. M. S. A. 1978, § 40-10A-313

§ 40-10A-313. Recognition and enforcement

[Currentness](#)

A court of this state shall accord full faith and credit to an order issued by another state and consistent with the Uniform Child-Custody Jurisdiction and Enforcement Act which enforces a child-custody determination by a court of another state, unless the order has been vacated, stayed or modified by a court having jurisdiction to do so under Article 2 of that act.

Credits

[L. 2001, Ch. 114, § 313, eff. July 1, 2001.](#)

NMSA 1978, § 40-10A-313, NM ST § 40-10A-313

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N. M. S. A. 1978, § 40-10A-314

§ 40-10A-314. Appeals

[Currentness](#)

An appeal may be taken from a final order in a proceeding under Article 3 of the Uniform Child-Custody Jurisdiction and Enforcement Act in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under Section 204, the enforcing court may not stay an order enforcing a child-custody determination pending appeal.

Credits

[L. 2001, Ch. 114, § 314, eff. July 1, 2001.](#)

NMSA 1978, § 40-10A-314, NM ST § 40-10A-314

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N. M. S. A. 1978, § 40-10A-315

§ 40-10A-315. Role of prosecutor or public official

Currentness

(a) In a case arising under the Uniform Child-Custody Jurisdiction and Enforcement Act or involving the Hague Convention on the Civil Aspects of International Child Abduction, the prosecutor or other appropriate public official may take any lawful action, including resort to a proceeding under Article 3 of the Uniform Child-Custody Jurisdiction and Enforcement Act or any other available civil proceeding, to locate a child, obtain the return of a child or enforce a child-custody determination if there is:

(1) an existing child-custody determination;

(2) a request to do so from a court in a pending child-custody proceeding;

(3) a reasonable belief that a criminal statute has been violated; or

(4) a reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(b) A prosecutor or appropriate public official acting under this section acts on behalf of the court and may not represent any party.

Credits

L. 2001, Ch. 114, § 315, eff. July 1, 2001.

NMSA 1978, § 40-10A-315, NM ST § 40-10A-315

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N. M. S. A. 1978, § 40-10A-316

§ 40-10A-316. Role of law enforcement

[Currentness](#)

At the request of a prosecutor or other appropriate public official acting under Section 315, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a prosecutor or appropriate public official with responsibilities under Section 315.

Credits

[L. 2001, Ch. 114, § 316, eff. July 1, 2001.](#)

NMSA 1978, § 40-10A-316, NM ST § 40-10A-316

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N. M. S. A. 1978, § 40-10A-317

§ 40-10A-317. Costs and expenses

[Currentness](#)

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor or other appropriate public official and law enforcement officers under Section 315 or 316.

Credits

[L. 2001, Ch. 114, § 317, eff. July 1, 2001.](#)

NMSA 1978, § 40-10A-317, NM ST § 40-10A-317

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Article 4. Miscellaneous Provisions

N. M. S. A. 1978, § 40-10A-401

§ 40-10A-401. Application and construction

[Currentness](#)

In applying and construing the Uniform Child-Custody Jurisdiction and Enforcement Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Credits

[L. 2001, Ch. 114, § 401, eff. July 1, 2001.](#)

NMSA 1978, § 40-10A-401, NM ST § 40-10A-401

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Article 4. Miscellaneous Provisions

N. M. S. A. 1978, § 40-10A-402

§ 40-10A-402. Severability clause

[Currentness](#)

If any provision of the Uniform Child-Custody Jurisdiction and Enforcement Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act which can be given effect without the invalid provision or application and to this end the provisions of the act are severable.

Credits

[L. 2001, Ch. 114, § 402, eff. July 1, 2001.](#)

NMSA 1978, § 40-10A-402, NM ST § 40-10A-402

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N. M. S. A. 1978, § 40-10A-403

§ 40-10A-403. Transitional provision

[Currentness](#)

A motion or other request for relief made in a child-custody proceeding or to enforce a child-custody determination which was commenced before the effective date of the Uniform Child-Custody Jurisdiction and Enforcement Act is governed by the law in effect at the time the motion or other request was made.

Credits

[L. 2001, Ch. 114, § 403, eff. July 1, 2001.](#)

NMSA 1978, § 40-10A-403, NM ST § 40-10A-403

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